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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

CHAN VANG,

Defendant and Appellant.

F055965

(Super. Ct. No. F07906484)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Gary D. Hoff, Judge.

Eric Weaver, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* Before Cornell, Acting P.J., Gomes, J., and Dawson, J.

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On June 9, 2008, appellant Chan Vang, pursuant to a plea agreement, pled no contest to assault with a firearm (Pen. Code, § 245, subd. (a)(2))¹ and admitted enhancement allegations that in committing that offense, he (1) personally used a firearm (§ 12022.5, subd. (a)), and (2) acted for the benefit of, at the direction of or in association with a criminal street gang, with the specific intent to promote, further or assist in criminal conduct by gang members (§ 186.22, subd. (b)(1)(C)). One of the terms of the plea agreement was that appellant could receive a sentence of up to 24 years in prison.

On July 8, 2008, the court imposed a prison sentence of 24 years, consisting of the 4-year upper term on the substantive offense, the 10-year upper term on the firearm use enhancement, and 10 years on the gang enhancement (§ 186.22, subd. (b)(1)(C)). The court awarded appellant 484 days of presentence credits, consisting of 421 days of actual time credits and, under section 2933.1, 63 days of conduct credits.²

Insofar as the record indicates, appellant did not request, and the court did not issue, a certificate of probable cause (§ 1237.5).

Appellant's appointed appellate counsel has filed an opening brief which summarizes the pertinent facts, with citations to the record, raises no issues, and asks that this court independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Appellant has not responded to this court's invitation to submit additional briefing.

¹ Except as otherwise indicated, all statutory references are to the Penal Code.

² Section 2933.1 limits conduct credits to no more than 15 percent of actual presentence time in custody for persons convicted of any offense listed in section 667.5, subdivision (c). (§ 2933.1, subds. (a) & (c).) Assault with a firearm (§ 245, subd. (a)(2)) with personal use of a firearm (§ 12022.5, subd. (a)) is such an offense. (§ 667.5, subd. (c)(8).)

FACTS³

On April 21, 2007, police officers, investigating a report of an assault, made contact with the victim, who told officers the following. He was standing in his cousin's driveway with friends when a car drove by. As the car slowed down, the passenger extended his arm out the window, holding a handgun. The passenger fired at least 10 shots. The victim was struck by bullets in the thigh and the right ankle.

A witness identified the driver of the car as Darnell King. On April 23, 2007, police made contact with King, who admitted being a member of the "Asian Boys" criminal street gang. "On June 19, 2007, officers met with CYA parole agents and confirmed that the shooter was [appellant]." On July 25, 2007, police arrested appellant "after a lengthy foot chase," during which appellant discarded a handgun. Appellant told police he and King were members of the Asian Boys gang.

DISCUSSION

As indicated above, the court awarded appellant 484 days of presentence credits, consisting of 421 days of actual time credits and 63 days of conduct credits. The court apparently based its calculation of actual time credits on the report of the probation officer, which indicated appellant was in custody from July 25, 2007, through July 8, 2008, the date of sentencing, and on the uncontroverted representation by defense counsel at sentencing that appellant was also in custody from April 23, 2007, through July 10, 2007. However, the actual time for those two periods is 429 days, not 421 days as found by the court. In addition, appellant is entitled to conduct credits of 64 days, pursuant to section 2933.1. Therefore, appellant is entitled to 493 days of presentence credits, not 485 days as found by the court. We will modify the judgment accordingly and direct the

³ Our factual statement is taken from the report of the probation officer.

trial court to prepare an amended abstract of judgment. (*People v. Scott* (1994) 9 Cal.4th 331, 354 [an appellate court is authorized to correct an unauthorized sentence].) ⁴

We note that the abstract of judgment indicates the imposition of a 10-year enhancement pursuant to section “1202.22.5.” No such statute exists. The correct designation is section 12022.5, subdivision (a). We will direct the trial court to correct this obvious clerical error in the amended abstract. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185 [appellate court may correct clerical errors].)

Following independent review of the record, we have concluded that no other reasonably arguable legal or factual issues exist.

DISPOSITION

The judgment is modified to provide that appellant is awarded 493 days of presentence credits, consisting of 429 days of actual time credits and 64 days of conduct credits. The trial court is directed to prepare an amended abstract of judgment which indicates this modification and the correct code section for the firearm-use enhancement (§ 12022.5, subd. (a)) and to forward a certified copy of the amended abstract to the Director of the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

⁴ We informed the parties, pursuant to Government Code section 68081, that were we to otherwise affirm the judgment, we proposed to correct the presentence credits error discussed above. Neither party responded to our invitation to submit briefing on the issue.